

TOOLKIT TO IDENTIFY AND ADDRESS STATELESSNESS



CZECHIA

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organization
for aid to
refugees



European
Network on
Statelessness

TOOLKIT TO IDENTIFY AND ADDRESS STATELESSNESS IN CZECHIA

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LIST OF ABBREVIATIONS

1954 Convention	1954 Convention Relating to the Status of Stateless Persons
1961 Convention	1961 Convention on the Reduction of Statelessness
Act on Birth Registry	Act No. 301/2000 Coll., on Birth Registry
Asylum Act	Act No. 325/1999 Coll., on Asylum
Citizenship Act	Act No. 186/2013 Coll., on Citizenship of the Czech Republic
CRC	Convention on the Rights of the Child
CRPD	Convention on the Rights of Persons with Disabilities
CSO	Czech Statistical Office
ICCPR	International Covenant for Civil and Political Rights
ICEDAW	International Convention on the Elimination of all forms of Discrimination Against Women
ICERD	International Convention on the Elimination of All Forms of Racial Discrimination
ICESCR	International Covenant on Economic, Social and Cultural Rights
ICPPED	International Convention for the Protection of All Persons from Enforced Disappearance
Immigration Act	Act No. 326/1999 Coll., on the Residence of Foreigners in the Czech Republic
Moi	Ministry of the Interior
SDP	Statelessness determination procedure
UNHCR	United Nations High Commissioner for Refugees

1. TERMINOLOGY

In this guide we use the following terms as defined below.

Citizen/national: these terms are used to mean the same thing, i.e. a legal bond between a person and a State, which usually allows an unrestricted right of residence on the territory, full civil and political rights, access to national identity and travel documents, and the ability to freely leave and return to the territory.

Own country/home country/country of former habitual residence: these terms refer to a country in which a stateless person was born or has previously lived. Habitual residence means stable, factual residence, which covers *'those stateless persons who have been granted permanent residence, and also applies to individuals without a residence permit who are settled in a country, having been there for a number of years, who have an expectation of on-going residence there'*.¹

Host country: refers to a country in which a stateless person lives and is seeking to be recognised and granted residence, protection status, and/or nationality.

***In situ* statelessness (vs migratory statelessness):** *in situ* statelessness refers to the situation in which a person is stateless even though they have long-established ties to a country, often because they have long-term residence or were born in that country. Generally, their statelessness is the result of issues in the framing and/or implementation of nationality laws, and they should be recognised as nationals of this country (if they wish this). This contrasts with migratory statelessness, which refers to statelessness that occurs as a cause or a consequence of displacement, usually amongst people who have migrated from one country to another (or their children); the preferred remedy for them may be recognition and protection as stateless people and/or acquisition of the nationality of the host country.

***Jus soli* citizenship/birthright citizenship:** citizenship that is acquired as a result of being born on the territory of a State. In some countries, acquisition of citizenship may be dependent on other conditions, such as one parent having lawful residence in the country (restricted *jus soli*).

***Jus sanguinis* citizenship:** citizenship that is acquired based on the citizenship of a person's parents or ancestors.

Asylum-seeker: refers to a person who is requesting asylum or another form of international protection, usually because they fear persecution or serious harm. Many asylum-seekers are refugees but have not yet been recognised as such.

Refugee: under the 1951 Convention relating to the Status of Refugees, a refugee is a person who has a *'well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence as a result of such events, is unable or, owing to such fear, is unwilling to return to it.'*

¹ See UNHCR [Handbook on Protection of Stateless Persons](#) (2014), Para 139 (hereinafter 'UNHCR's Statelessness Handbook').

A person *is* a refugee if they meet this definition (or if they are a Palestinian in certain circumstances)² whether or not the person has been officially recognised as a refugee. Regional or national legislation may also have different definitions and protection frameworks that are wider than the international definition of the 1951 Convention.

Stateless person: a person '*who is not considered as a national by any State under the operation of its law*' (1954 Convention relating to the Status of Stateless Persons, Article 1). A person who meets this definition *is* stateless, whether or not their statelessness has been officially recognised.³

Undetermined or unknown nationality: refers to a situation where a person's nationality or lack of nationality is not yet confirmed. These terms should be used with extreme caution for the shortest possible time and should always trigger a formal determination of the person's nationality or statelessness. People who identify themselves as stateless should generally be recorded as stateless and referred to an appropriate procedure to determine their statelessness (or nationality), in line with international law.

Statelessness determination procedure (SDP): a legal process by which an individual, usually in a migratory context, is officially recognised as a stateless person and granted stateless status in a host country (including residence and socio-economic rights).

Nationality determination procedure: a process by which an individual's nationality is determined (usually in the country in which they were born) and which may also determine that the person has *no* nationality. This procedure should be applied to children soon after birth for the purposes of determining and recording their nationality.

2. INTRODUCTION TO STATELESSNESS IN CZECHIA

Statelessness in Czechia is mainly linked with migration. Based on a 2018 UNHCR mapping study⁴ and UNHCR's 2023 provisional mid-year data⁵, there are approximately 1,500 stateless persons living in Czechia. There are official statistics published by the Ministry of Interior (Moi) and by the Czech Statistical Office (CSO). However, there is no central register of foreign nationals living in Czechia. Official statistics do not cover all stateless persons in the country. The exact number of stateless persons living in Czechia and their backgrounds is therefore unknown. However, there are a significant number of stateless individuals dispersed throughout Czechia from various countries and regions, mostly former USSR countries.

Population census data has evolved over the years, with the 2021 census⁶ listing 29,137 persons as "*not identified*" and the 2011 census⁷ listing 1,502 persons as having "*no citizenship*". The Moi provides monthly statistics on foreigners with legal residence⁸, which include the categories "*stateless and not identified*," "*citizenship unknown or not*

² Pursuant to Article 1D of the Refugee Convention and other international law and UN resolutions. See [Palestinians and the Search for Protection as Refugees and Stateless Persons](#) (ENS & BADIL, 2022).

³ A distinction between de jure and de facto statelessness is not made in this guide, as it is not relevant for the purposes of determining whether a person is stateless under the 1954 Convention. The term de facto stateless is not defined in international law and it is recommended to avoid it, as broader interpretations of the term have been used to unduly exclude from protection persons who are stateless under Article 1(1) of the 1954 Convention. For example, a person who should be considered stateless in accordance with a state's law but is not in practice recognised as a national by the authorities of that state, is considered stateless 'under the operation' of that state's law.

⁴ UNHCR, Faces of Statelessness in the Czech Republic, December 2020. Available [here](#).

⁵ UNHCR Czech Republic Factsheet, September 2023. Available [here](#).

⁶ See results [here](#)

⁷ See results [here](#)

⁸ See [here](#)

identified", and "*Palestinians*". The Mol keeps separate statistics for international protection procedures⁹, which categorise asylum-seekers and refugees according to their nationalities. The CSO also provides annual data on the number of foreigners disaggregated by gender, age, and nationality.¹⁰

The legal and policy framework in Czechia has some positive elements and notable gaps. Czechia has obligations under international and regional agreements, as a party to the 1954 Convention relating to the Status of Stateless Persons and the 1961 Convention on the Reduction of Statelessness. Czechia also has international obligations to protect the right to a nationality and the rights of stateless individuals according to other UN and regional treaties to which it is a party.¹¹ Nevertheless, there is no formal mechanism for determining statelessness leading to a comprehensive protection status. Although the Immigration Act regulates a procedure by which the Mol can recognise and confirm statelessness, there are still significant limitations and gaps in the rights of applicants and those who are recognised as stateless.

The socio-economic rights of stateless applicants are not guaranteed, and persons recognised as stateless are initially granted only a tolerated stay visa for one year. This approach violates Czechia's international obligations and the protection objectives of the 1954 Convention, as it does not establish a stable residence status and therefore makes integration more difficult.¹²

In terms of preventing and reducing statelessness, while there are some safeguards to prevent childhood statelessness, these are only partial and depend on the actions or status of the parents. Positively, there are no legal provisions empowering authorities to revoke Czech citizenship, no automatic loss mechanisms, and there are safeguards to prevent statelessness in cases of voluntary renunciation of citizenship.¹³

3. WHAT IS STATELESSNESS AND WHY IS IT A PROBLEM?

To be stateless is not to be recognised as a national of any country. Stateless people have specific rights under international law, many of them parallel to the rights of refugees. The two main international instruments addressing statelessness are the 1954 Convention Relating to the Status of Stateless Persons and the 1961 Convention on the Reduction of Statelessness. Other international and regional declarations and agreements are relevant in some contexts.

Article 1 of the 1954 Convention defines a stateless person as someone '*who is not considered as a national by any State under the operation of its law*'. This definition is also considered to be customary international law. [UNHCR's Handbook on Protection of Stateless Persons](#) confirms that this definition requires consideration of legislation and the way that laws and policies are applied in practice.

Czech law defines a stateless person in Section 49a of the Immigration Act as a "*foreigner who is not considered by any State to be its national under its law*".¹⁴ This definition mirrors the Czech translation of the 1954 Convention, to which Czechia is a state party, and which has direct effect in domestic law. However, the Czech translation of the 1954 Convention

⁹ See [here](#)

¹⁰ See [here](#)

¹¹ For further information, see Joint Submission to the Human Rights Council at the 42nd Session of the Universal Periodic Review: Czech Republic. OPU, ENS, ISI. Available [here](#).

¹² ENS. Statelessness Index Czechia Country Profile. Available [here](#).

¹³ ENS. Statelessness Index Czechia Country Profile. Available [here](#).

¹⁴ Section 49a of the Immigration Act. Available in CZE [here](#).

has several inaccuracies.¹⁵ The term "*under the operation of its law*" is excluded, which has led to legal disputes and differing interpretations, with some courts recognising the inaccuracy of the translation and advocating a more expansive interpretation of the definition.¹⁶

The Immigration Act also regulates the procedure for determining statelessness. Despite its international commitments and obligations, Czechia has not yet established a specialised procedure to grant protection to stateless persons, which leaves a significant gap in ensuring the full range of rights for stateless persons. Since July 2023, Czech law has a procedure for determining statelessness, which does not automatically lead to a residence permit (only a tolerated stay for one year) and the protection afforded is very limited.¹⁷

Stateless persons are mentioned in various national acts and laws, including but not limited to the Asylum Act, the Immigration Act, the Citizenship Act, and others. Although the definition of a stateless person is included in the Immigration Act, as this is the same definition as the 1954 Convention, the interpretation of statelessness remains consistent across these different national laws, regardless of where the definition is explicitly stated.

Summary of Czechia's international obligations to address statelessness¹⁸:

- **1954 UN Convention relating to the Status of Stateless Persons:** Czechia is a party to this Convention (with reservations to Articles 27 and 28), which focuses on the protection of stateless persons.
- **1961 UN Convention on the Reduction of Statelessness:** Czechia is a party to this Convention, which aims to prevent and reduce statelessness by ensuring access to nationality and related rights.
- **1997 European Convention on Nationality:** Czechia is a party to this Convention, which establishes principles for the acquisition and retention of nationality and the prevention of statelessness.
- **EU Return Directive:** Czechia is a party to this Directive, which ensures humane treatment and respect for the rights of persons subject to return.
- **International human rights treaties:** Czechia is a party to various human rights treaties, including the [ICCPR](#), [ICESCR](#), [CRC](#), [ICEDAW](#), [ICERD](#), [CRPD](#) and [ICPPED](#), which provide a comprehensive framework for addressing statelessness and protecting stateless persons.

Direct effect in Czech law: These international conventions all have a direct effect in Czech law and underscore the country's commitment to preventing statelessness and protecting the rights of stateless persons.

Unaddressed, statelessness is a cause of denial of access to fundamental rights and opportunities. It often means that people cannot reach their full potential because they are prohibited from working, unable to access education and/or healthcare, and unable

¹⁵ UNHCR, Faces of Statelessness in the Czech Republic, December 2020. Available [here](#).

¹⁶ Decision of Municipal Court in Prague, 19 January 2023, n. 14 A 126/2021-39. Available [here](#).

¹⁷ ENS. Statelessness Index Czechia Country Profile. Available [here](#).

¹⁸ For further information, see Joint Submission to the Human Rights Council at the 42nd Session of the Universal Periodic Review: Czech Republic. OPU, ENS, ISI. Available [here](#).

to participate fully in society or democratic processes. They are often forced to live in poverty and may be subjected to unlawful detention, exploitation, and discrimination. These circumstances and other experiences may have severe impacts on their mental health and their overall well-being. Finding solutions for stateless people brings many benefits for individuals and societies. In addition to protecting fundamental human rights, the recognition and resolution of statelessness contributes to social and economic development.¹⁹

Stateless people in Czechia encounter challenges in addressing immigration and nationality matters. These include issues related to obtaining identity and travel documents, navigating complex administrative procedures, and accessing basic services such as healthcare and accommodation. The procedure for determining statelessness in Czechia guarantees certain rights, such as the right to remain on Czech territory (for initial applications), and ensures the issuance of IDs, but does not guarantee accommodation in reception centres for asylum-seekers or access to health insurance. Applicants must demonstrate that no State recognises them as citizens and while the burden of proof is shared, cooperation from applicants is expected, which can be challenging, especially for those who faced persecution or discrimination in their home countries.

If a person is recognised as stateless, they are granted a tolerated stay visa for one year, which can be extended and renewed.²⁰ After five cumulative years, individuals become eligible to apply for permanent residence. However, this approach contravenes the protective purpose of the 1954 Convention and does not constitute a strong residence status, leading to challenges for those recognised as stateless in Czechia, particularly in terms of their livelihood and integration.

While stateless persons with a tolerated stay visa have the potential to access public health insurance, they may face barriers in practice.²¹ Stateless individuals have the right to work during the statelessness procedure after six months (similar to asylum-seekers).²²

Analysis by UNHCR shows that the individual situation of stateless people is not fully understood by authorities. Interviews revealed a lack of willingness on the part of officials to recognise the special circumstances of stateless persons, leading to inconsistent case handling. This created a sense of powerlessness among stateless persons, further reinforced by the lack of clear procedural guidelines to help them navigate their situation and understand the necessary steps to take.²³ It is crucial to focus on the individual situation, recognising that statelessness is a complex issue that requires personalised solutions.

Stateless persons awaiting recognition of their status are often denied access to education and the right to family reunification is not extended to those with a tolerated stay visa.

The challenges faced by stateless people living in Czechia have a significant impact on their daily lives. Stateless people or those at risk often encounter difficulties when attempting to access vital services such as opening a bank account or paying bills. While stateless persons are issued with an identity document, in practice it is not always

¹⁹ See UN resolution of 12 July 2023 recognising some of the many complexities of statelessness, the harm it causes, and calling for states to take action to fulfil the right to a nationality (The right to a nationality: equality in nationality rights in law and in practice, A/HRC/53/L.28/Rev.1).

²⁰ Section 49a para. 1 of the Immigration Act.

²¹ Section 48, 50(3), 113 and 114 of the Immigration Act

²² Section 48 para. 3 of the Immigration Act (effective as of 1 January 2024 according to the Art. XVII point b) of the Act No. 173/2023 Coll.)

Explanatory Memorandum of 8 February 2023 to the Bill amending the Immigration Act. Available in CZE [here](#).

²³ UNHCR, Faces of Statelessness in the Czech Republic, December 2020. Available [here](#).

sufficient for certain institutions, leading to exclusion from essential services. In addition, the lack of proper documentation and the requirement to obtain a work permit can be a significant barrier for stateless persons to secure employment, further exacerbating their challenges and hindering their access to economic opportunities.

The UNHCR mapping study also states that stateless people often prioritise self-sufficiency and securing housing as their main survival strategies, sometimes putting off other life goals such as starting a family or addressing personal needs. Those in prolonged irregular situations often felt that they had spent their prime years in insecurity without adequate support, perceiving their situation as unjust, and experiencing a sense of hopelessness. Loss of residence status led to reduced job opportunities, income stability, and deteriorating living conditions. Stateless persons lacking support networks often resorted to irregular employment and temporary housing arrangements, leading to homelessness for many.²⁴

For more information, see:

ENS leaflet [Statelessness: What do you need to know?](#)

ENS [Short Guide for Refugee Response Actors](#).

For more recent figures, see UNHCR's annual [Global Trends Report](#).

Hear from people with lived experience of statelessness [here](#).

Read the stories of stateless people living in Czechia in the UNHCR mapping study [here](#).

To learn more about the rights of stateless persons and Czechia's legislative approach, see [Explanatory Memorandum](#).

4. IDENTIFYING STATELESSNESS

Statelessness arises in a wide range of circumstances and may directly or indirectly be caused by:

- Discrimination based on sex, sexual or gender identity, ethnicity, religion, or other factors
- Gaps or restrictions in nationality laws, often but not necessarily linked to state succession
- Conflicts of nationality laws between various countries
- Issues relating to state sovereignty and incomplete recognition of statehood
- Obstacles in civil registration procedures and practices, particularly birth registration
- Arbitrary deprivation of nationality, including for political reasons²⁵
- Armed conflict (inability to access birth registration or documents due to conflict, etc)

²⁴ UNHCR, Faces of Statelessness in the Czech Republic, December 2020. Available [here](#).

²⁵ Deprivation of nationality is often used as a punishment for human rights advocacy or opposition to government oppression, and increasingly in Europe as a counter-terrorism measure, even when it leads to statelessness. See e.g. SALAM DHR, ISI & Hawiati, [Arbitrary Revocation of Nationality in Bahrain: a Tool of Oppression](#) (2021); ENS, [Statelessness Index Thematic Briefing: Deprivation of nationality and the prevention of statelessness in Europe](#) (2021).

- Climate change resulting in forced displacement and/or destruction of states²⁶
- Other laws, policies, practices, or circumstances not listed above, especially when adequate safeguards to prevent statelessness are not in place

Some States cause statelessness, or cause it to continue, through ostensibly neutral or in some cases allegedly positive laws and policies that result in statelessness and/or the failure to protect stateless people. For example, a nationality law that restricts nationality to people who were resident in a country at a particular time is neutral on its face, but it excludes people who have a strong connection to that country but who were not resident at the requisite time.²⁷ It is important to be aware that states are sometimes hostile towards stateless people, deny that state action or inaction has caused statelessness, or are unaware of the ways in which laws and policies result in statelessness or cause hardship for stateless people.

Statelessness in Czechia arises from various circumstances but is mostly linked to migration. Refugees may be at heightened risk of statelessness due to their status as foreigners and factors such as lack of documentation, inability to prove their nationality, or issues related to changes in their home country's government or laws. Children born in the territory may inherit statelessness from their parents, though there are some safeguards in place (see Section 9).²⁸

Nationality and discrimination based on sex, gender, and/or sexual or gender identity

In numerous countries, nationality laws discriminate based on sex, gender, and/or sexual or gender identity, sometimes preventing women or LGBTQI+ parents from passing on their nationality to their children or discriminating in other ways that may lead to statelessness. For more information, see a [list of countries](#) whose nationality laws discriminate against women and a [blog article](#) relating to discrimination based on sexual or gender identity and childhood statelessness.

HOW TO IDENTIFY STATELESSNESS

Sometimes statelessness is relatively obvious; other times, it is 'hidden'. For example, a person who has been deprived of nationality for political reasons will often be aware that they are stateless (and may or may not have documentary evidence to prove it). In some situations, however, statelessness may remain unidentified for many years, particularly when a child is born outside their parents' country of nationality and the laws of their home country require registration in order to acquire nationality. Such children's statelessness may go unrecognised for many years, and as a result children may face challenges in accessing basic rights. Some people may not know that they or their children are stateless.

Statelessness can be identified in various official procedures. Adequate training is vital for all those who work in procedures or institutions in which statelessness can be identified. Relevant procedures may include:

- Statelessness determination procedures
- Nationality determination and naturalisation procedures

²⁶ See e.g. Michelle Foster, Nicola Hard, H el ene Lambert and Jane McAdam, [Preventing Statelessness and Nationality Loss in the Context of Climate Change](#) (ENS, 2022).

²⁷ See e.g. Neha Jain, [Manufacturing Statelessness](#), *American journal of international law*, 2022, Vol. 116, No. 2, 237-288; and see [R \(on the application of Marouf\) v Secretary of State for the Home Department](#) [2023] UKSC 23 (finding the UK's Syrian resettlement scheme's exclusion of Palestinians living in UNRWA areas of operation is lawful).

²⁸ see Czechia Country Profile. ENS Statelessness Index. Available [here](#).

- Birth registration procedures
- International protection procedures
- Dublin Regulation procedures
- Refugee or statelessness family reunification procedures
- Passport application procedures
- Stateless persons travel document application procedures
- Immigration detention procedures
- Removal procedures
- Refugee resettlement procedures
- Other immigration or human rights procedures
- Identification process of unaccompanied and separated children conducted by Child Protection Services
- Criminal proceedings
- Welfare benefits (including asylum accommodation and support) eligibility procedures
- Social care and family court procedures
- School and university admission procedures
- Public health access procedures
- Appeal and judicial review procedures relating to any of the above

There are many indicators that may identify that a person is or may be stateless, including, for example:

- Have never had a valid passport or an identity card
- Have never had birth certificate or official documents from their country of birth
- Not able to be registered as a citizen in their home country
- From a stateless population or a country with a large stateless population (e.g., Rohingya, Bidoon, Palestinian, Kurd, Roma, Syria, Myanmar, Thailand, etc)
- Born in a country which no longer exists, is not universally recognised by other governments, and/or is occupied by another state
- Cannot obtain identity documents for themselves or their children
- Country of birth or former habitual residence refuses to renew travel or identity documents or allow return
- Difficulties reuniting with family members because they cannot obtain identity or travel documents
- Could not go to school, work, access healthcare, get married or register their child's birth or nationality
- Detained for removal but not accepted for return to a country of birth or former residence

This list is not exhaustive. At the identification stage, what is most important is to at least record any initial indications of statelessness. An individual should then be referred to the relevant competent authority to undertake statelessness determination or another relevant procedure, and/or to a competent legal adviser if they do not have one. Whilst some stateless people may not be aware that they are stateless, others will have known for a long time but may have never been formally recognised as stateless. Many stateless people may find it difficult to talk about their lack of nationality and other circumstances, especially if they have never had documentation and/or have had experiences of being disbelieved by authorities. The aim of the below questions should not be to give an individual the impression that the interviewer is trying to determine whether they are telling the truth about their statelessness or lack of documentation, but rather to assist in identifying whether the person is stateless and where the proof of their statelessness may

lie. Many stateless people may have suffered traumatic experiences in their home countries, during journeys, or in host countries. This should be considered when conducting interviews with people who are or may be stateless; trauma-informed interviewing techniques should be used whenever possible.²⁹

How can a person not know they are stateless? How can they be assisted?

Svetlana is a 45-year-old woman who left a former Soviet Union republic to find work and better opportunities in Czechia. She never went to school and grew up in a remote village. Svetlana came to the Czech Republic with a valid passport and visa from the Soviet Union hoping to find a well-paid job with housing benefits, as she had heard about such opportunities in her home country.

Upon arriving in the Czech Republic, Svetlana quickly realized that the job and housing she had been promised were far from what she had expected. She found herself in a situation of exploitation, working long hours for extremely low wages in a factory where many of her co-workers faced similar circumstances. The housing provided by her employer was overcrowded and in poor condition. Since she had no place to return to in her home country, she applied for international protection. After some time, the case was dismissed. In the meantime, however, Svetlana's passport had expired.

She managed to reach out to local organization that assists migrants and vulnerable individuals. During the consultations the realities of her life in Czechia began to uncover. Svetlana's lawyer takes time over several trauma-informed interviews to build trust with Svetlana, explain the law and procedures relating to seeking asylum and recognition as a stateless person, and check that Svetlana understands. The lawyer writes twice to the embassy of Svetlana's country of birth asking if Svetlana is considered a national of that country. She gets no response. A consular officer explains over the phone that, without identification documents, Svetlana cannot enter the embassy and will not be considered a citizen. They will not take any steps to confirm that Svetlana is from that country, nor accept her return. An expert report states that the circumstances Svetlana describes are consistent with objective reports and known facts.

Lawyers helps Svetlana to file the application for determination of statelessness.

Questions to consider and potentially ask to identify or elicit proof of statelessness or nationality include:

Question	Information to look out for
Where and when was the person born?	
Does the person come from a country at high risk of statelessness, affected by state succession or a land dispute?	In particular, but not limited to: Ukraine; Russia; Palestine; Western Sahara; Bangladesh; Ivory Coast; Burma; Thailand; Syria; Kuwait; Uzbekistan; Saudi Arabia; Cambodia; Iraq.

²⁹ For example, see: [Trauma Informed Interviewing Techniques](#): A toolkit for attorneys and other professionals working with immigrant children (Stanford Center for Health Education & University of Texas at Rio Grande Valley); and [Disclosing and identifying international protection needs in the Middle East and North Africa](#): Training Module, Part 3: Trauma-informed, victim-centered approaches (Center for Human Rights, Gender and Migration & MENA Community Protection Network (supported by UNHCR)).

Was their birth registered and do they have a birth certificate? If so, is this proof of nationality?	If not, risk of statelessness.
Does the person belong to a specific group which is known to be affected by statelessness?	For example: Rohingya, Roma, Kurdish, Sahrawi, Kuwaiti Bidoon, Palestinian.
Does the person come from a country where birth registration is not routine or is complicated?	
Where has the person lived since birth? Of what country does the person consider themselves to be a citizen (if any)?	
Do the authorities of that country or any other country consider the person to be a citizen?	
Has the person ever applied for nationality in any country? What was the outcome?	
Does the person have proof of having a nationality, such as a certificate of citizenship, a valid national identity card or a passport? If not, why not?	
Does the person come from a country where women do not have the right to pass their nationality on to their children in the same way as men? If yes, have they inherited their father's nationality?	See a list of countries whose nationality laws discriminate against women.
Was the person able to go to school, work or register their marriage or the birth of their children in their country of origin or usual place of residence?	If not, this may indicate a risk of statelessness.
Does the person have, or did they have, one or several nationalities?	If not, risk of statelessness.
What nationality(ies) did the person's parents and grandparents have? Were there barriers to inheriting these nationalities?	Consider if they belonged to any groups affected by statelessness.
Does the person have a valid or expired identity document? If not, have they tried to obtain identity documents from another country?	
Has the person faced any challenges in obtaining or renewing their passport or national identity card?	
Has the person ever been excluded from access to certain rights or services on the grounds of their nationality (or lack of nationality)?	
Has the person started procedures with the relevant authorities to obtain identity documents? Do they have evidence of these steps? When did they start these steps? Have they had a reply from the authorities? If not, have they tried again? How many times?	If applying to MoI for the procedure for determining statelessness, this information is important because it will be analysed by the officers processing the application. Even though the burden of proof in the procedure is shared, unlike the international protection procedure,

<p>Are they in fear of persecution if they return? Have they submitted an asylum request?</p>	<p>greater cooperation from the applicant is expected. Applicants should enclose evidence that any State with which they have links does not consider them to be its citizen. For more information on taking into account the fear of persecution and the procedure for determining statelessness, see Section 5.</p>
<p>What nationality was registered by Mol when the person arrived in Czechia?</p>	
<p>Did the person have access to a statelessness determination procedure in another country? If yes, what was the relevant authority's decision?</p>	
<p>Does the person know that it is necessary to register their child with civil authorities and the conditions for birth registration? Can the mother pass on her nationality to the child? Did she encounter problems registering the child's birth (in Czechia and with the authorities of her country)?</p>	<p>Risk of statelessness for children of beneficiaries of international protection</p>
<p>Has the person been repeatedly detained in a host country, but no embassy acknowledges it?</p>	<p>If yes, risk of statelessness.</p>
<p>In the case of a pregnant woman, is she concerned about the nationality of her unborn child? In the case of a young mother, has she faced problems registering her child? On the child's birth certificate, are both parents included, or just one of them?</p>	
<p>Was the child born abroad to same-sex parents? Is there discrimination in the country of origin which would give rise to the withdrawal of nationality? In case of a child born in Czechia, can nationality of the parent listed on the birth certificate be passed on to the child?</p>	
<p>Have any family members been deprived of their nationality, for example for political reasons? If yes, was the person's nationality affected?</p>	

If the person is found to be at risk of statelessness based on the checklist above, they should be referred to the Mol where they can seek protection and initiate the procedure that best meets their needs. For further information, see Section 5.

Further questions are available on the Stateless Journeys website, [for adults](#) and [for children](#). It is also important to research statelessness in the person's home country, which can help identify whether the person's circumstances indicate they may be stateless. Country of origin information that has specific information on statelessness may assist with this research, including the country position papers published by ENS on the [Stateless Journeys website](#) and research reports published by [Asylos](#).

Additional information about the law, policy, and practice on statelessness in Czechia is available in the [Statelessness Index](#) and jurisprudence is available in the [Statelessness Case Law Database](#).

5. ROUTES TO PROTECTION

After identifying that a person is or may be stateless, it is important that they are referred to an appropriate procedure to have their statelessness (or nationality) officially determined. Assessing whether a person is stateless can be simple or complex, depending on the circumstances. There are various legal procedures available depending on the situation and background of the person. The individual should be fully informed about all possible options from the outset so that they remain an agent of their situation as much as possible throughout. Actively referring someone to or accompanying someone through a procedure requires that they are fully informed at each step and given a choice about how they would like to progress.³⁰

ENS's participatory action research with member organisations and their clients shows the value of legal advisers and others engaging actively with stateless people who are seeking protection or recognition as nationals.

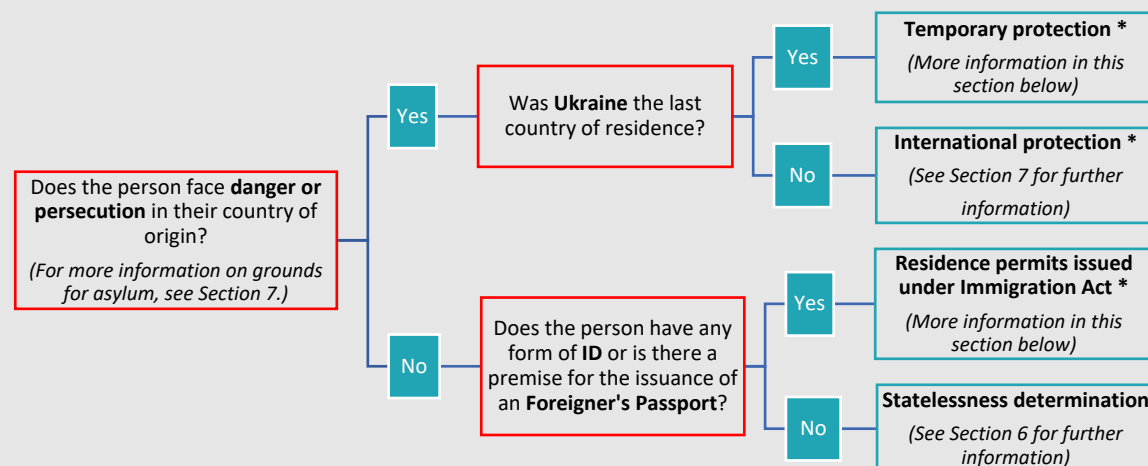
"Through the encouragement of a participatory approach to casework and involving children and families in decisions about the strategies taken to resolve their nationality problems, the project has sought to provide a platform for affected children and their families to tell their stories and give their views on what needs to change.... [T]his approach works. Several cases in the research resulted in positive outcomes for the children and families concerned. In all cases, families and children reported feeling heard, supported, and informed about their cases, even where systemic or other external factors affected or delayed positive outcomes".³⁰

In Czechia, stateless people can seek protection and regularise their stay through several routes, in particular statelessness determination or international protection procedures. For some, there may also be other ways to obtain protection.

³⁰ [Addressing the Risks of Statelessness among Children in Migration in Europe: Report on the findings of participatory action research by ENS members in five European countries](#) (2022), p. 19.

What procedure should the stateless person be referred to?

If there is a possibility that a person might be stateless (see checklist in Section 4), they should be referred to an appropriate procedure to have their statelessness or nationality determined. This flowchart can be used as a guide for referral:



* Even if another procedure is initiated, consider the relevance of the statelessness determination, as the issuance of a statelessness certificate may be beneficial for some persons.

STATELESSNESS DETERMINATION

Statelessness determination is essential to obtaining residence and related rights in Czechia. The competent authority is the Mol. The application should be made at Mol's DAMP Office³¹ in the person's place of habitual residence. There is no specific form, and the procedure is open to everyone. For a list of requirements and other information, see Section 6.

This option should be pursued if none of the alternatives described below meet the needs of the applicant, as it provides the least rights. However, a Certificate of Statelessness can be useful, as proof of statelessness may be required in various situations. It is therefore **strongly recommended** to submit an application for determination of statelessness in any case. In the case of overlapping procedures, the other procedure will almost always take precedence, and the procedure for determining statelessness will be suspended until the other procedure is completed.

INTERNATIONAL PROTECTION

A person can apply for international protection if they meet the grounds for asylum, which can also be related to their statelessness. The application should be submitted to the Foreigners Police or Mol.³² For more information, see Section 7.

In some cases, regularising stay in Czechia through international protection procedures may not be appropriate. A stateless person who is not eligible for refugee status should be referred to the procedure for determining statelessness.

³¹ Overview of Ministry of the Interior's Department for Asylum and Migration Policy Offices is available [here](#)

³² For further information on when and how to apply for international protection, see [UNHCR Help Portal](#)

OTHER ROUTES TO PROTECTION

Stateless persons can, in principle, apply for any other residence permit provided for in the Immigration Act. However, they face significant challenges if they lack the necessary travel and identity documents. To overcome this, they may choose to apply for a travel document from the Czech authorities or they must have an alternative travel document. For some, pursuing a residence permit under the Immigration Act may be a more favourable option, as the tolerated stay visa issued following a successful procedure for determining statelessness may not provide the same level of rights and security as other available residence permits.³³

Protection of unaccompanied and separated children

According to Art. 87 of the Immigration Act, unaccompanied and separated children entrusted to foster care may apply for permanent residence immediately, without the requirement of five cumulative years of prior residence.

It is still advisable for unaccompanied and separated children to undergo a procedure for determining statelessness. Obtaining a certificate of statelessness can help to ensure that they have a documented status to facilitate access to rights and services more effectively.

For more information on permanent residence for children entrusted to foster care, [visit this website](#).

In situations where the procedure for determining statelessness overlaps with the international protection procedure or another procedure regulated by the Immigration Act, the Mol will suspend the procedure for determining statelessness until the residence status of the person is decided. If the applicant has been granted any type of residence permit or already holds another type of residence permit and is found to be stateless, the Mol will only issue a certificate of statelessness.³⁴

States have specific obligations towards children under international law including to consider their best interests as a primary consideration and ensure they can acquire a nationality. More information about this is included in Section 9.

The European Convention on Human Rights (ECHR) may be used to protect stateless persons in Czechia. The ECHR applies to all persons under the jurisdiction of a Council of Europe member State, including stateless persons.

TEMPORARY PROTECTION FOR PEOPLE FLEEING UKRAINE

People fleeing the war in Ukraine may access temporary protection in Czechia, but not everyone is eligible. Although national legislation broadens the scope of eligibility, some may face obstacles in accessing protection. Eligible stateless persons are beneficiaries of international protection or equivalent national protection in Ukraine, which includes persons granted statelessness status in Ukraine, and their family members, as well as persons with a valid permanent residence permit in Ukraine who cannot return to their country of origin or former habitual residence. Stateless persons who have had temporary residence in Ukraine are excluded from temporary protection in Czechia, as are stateless persons and persons at risk of statelessness who cannot prove their ties to Ukraine. If the person is not eligible for temporary protection, they can apply for international protection or a tolerated stay visa, but these types of stay do not lead to the same rights as

³³ Section 49a of the Immigration Act

³⁴ Section 170d para. 3 and 4 of the Immigration Act

temporary protection.³⁵ To apply, the individual should present all available documents to prove their identity. If they do not have a valid biometric passport, they can prove their identity with a national ID card. If they do not have a national ID, they must obtain a document proving their identity from the Ukrainian embassy or consulate in order to be granted temporary protection in Czechia.

Additional information is available in the [Statelessness Case Law Database](#), the [Statelessness Index](#), the report [Addressing the Risks of Statelessness among Children in Migration in Europe](#), UNHCR Mapping Study – [Faces of Statelessness in Czech Republic](#), the [Information for stateless people fleeing Ukraine](#), and [Information for stateless people fleeing Ukraine in regard to Czechia](#).

6. DETERMINING STATELESSNESS

Stateless people in Czechia may apply to the MoI to be recognised as stateless in line with the legal framework established in the Immigration Act. The application for determination of statelessness is a crucial step to securing rights within the country.

The application should be filed at the Ministry of the Interior's Department for Asylum and Migration Policy Offices in the vicinity of the person's habitual residence. The list of offices is available [here](#).

The Immigration Act (Section 49a) defines a stateless person and describes the determination procedure. The procedure guarantees certain rights to applicants, but stateless people face some challenges. The law specifies the personal data required for the application, including name, sex, date of birth, State of birth, State from which citizenship was lost, and address in Czechia. There is no prescribed form for the application, and lawful residence is not required. All applicants should be informed of their rights and obligations and issued with a standardised ID that allows them to remain on the territory for the purpose of the determination procedure. The law defines the basis for concluding whether the applicant is a stateless person, and explicitly ensures the right of applicants to access their file.³⁶

Determination of statelessness should always be undertaken by the relevant competent decision-making authority.

Some important considerations include:

WHO HAS THE BURDEN OF PROOF IN STATELESSNESS DETERMINATION?

UNHCR's Statelessness Handbook confirms that the burden of proving that a person is stateless should be shared between the individual and the host country government. The individual should take reasonable steps to demonstrate that they are stateless. Once they have provided any evidence reasonably available to them, including their own statement, government officials should take reasonable steps to confirm the individual's statelessness.

³⁵ [Section 3 of Act on Certain Measures Related to Armed Conflict in Ukraine Caused by the Invasion of Russian Troops no. 65/2022 Coll. "Lex Ukraine" \(CZE\)](#)
[Information for Ukrainian citizens in the Czech Republic following the Russian aggression in Ukraine - FRS \(web portal for foreigners in Czechia\)](#), Ministry of the Interior of the Czech Republic (CZE)

³⁶ Section 49a of the Immigration Act

In Czechia, according to the Explanatory Memorandum, the burden of proof is shared. However, unlike the international protection procedure, greater cooperation from the applicant is expected.³⁷ It can be challenging for some people to bring such evidence to the procedure. The procedure for determining statelessness should consider the fact that the process of obtaining these documents can be complex, time-consuming, and costly. For stateless persons who may have faced persecution or discrimination in their home countries, obtaining official documentation can be extremely difficult, if not impossible.

Important considerations for statelessness determination:

- **Contact with officials of any country of origin/former residence should only be undertaken if it is safe to do so** – i.e., *not* if the individual fears persecution in that country.
- **Authorities should inform** people who are or may be stateless of any options to apply for recognition of statelessness and/or international protection or for a residence permit.
- **The nationality of a child should never be assumed.** A determination of the child's nationality should always be conducted, as the nationality may not be the same as their parents or of the country in which they were born.
- **Children and people who are traumatised, had limited access to formal education, and/or do not have a legal representative** are often less likely to understand what evidence could be useful to demonstrate statelessness. The host country government should assist them appropriately.
- **The individual should always have the right to an interview**, particularly when the evidence submitted does not clearly establish that they are stateless.

WHAT IS THE STANDARD OF PROOF FOR DETERMINING STATELESSNESS?

The UNHCR Statelessness Handbook confirms that the standard of proof for determining statelessness should be the '*reasonable degree of likelihood*' standard (which also applies in refugee status determination). This is also sometimes referred to as a '*real risk*' or a '*real possibility*' standard. Applying a higher standard of proof would undermine the object and purpose of the 1954 Convention.³⁸

The '*reasonable likelihood*' standard is lower than the '*balance of probabilities*' standard that applies to many civil matters, and much lower than a criminal standard of proof ('*beyond reasonable doubt*'). A '*reasonable likelihood*' may refer to something that is of relatively low risk of occurring. It is something that *reasonably could* occur, or where there is a '*real risk*' that it could occur.

Different standards may apply to certain aspects of assessing whether a person is eligible for protection as a stateless person. For example, if a host country official alleges that a stateless person is excluded from protection under one of the criminality-based 1954 Convention exclusion clauses, this may require the government to prove, to a higher standard, that the exclusion applies. The 1954 Convention refers to '*serious reasons for considering that*' the person should be excluded.

³⁷ Explanatory Memorandum of 8 February 2023 to the Bill amending the Immigration Act, available in CZE [here](#).

³⁸ UNHCR's Statelessness Handbook, Paragraph 91.

How to apply the 'reasonable likelihood' standard of proof in statelessness determination?

Kam was born at home, and her birth was not registered. She is part of an ethnic minority group which faces serious discrimination in her country of birth. She was not allowed to attend school or work. There was no way for Kam or anyone in her family to obtain identity documents as people of her ethnicity are not considered citizens. Numerous people, including police officers, are known to have committed abuses against people of Kam's ethnicity, with impunity. As a young adult, Kam travels to Europe and applies for asylum. She has no documents to prove who she is, nor where she was born and grew up. She is generally consistent in her statements about her life, though she sometimes gets confused about dates and the order in which things happened. She doesn't know some things she is asked about, like certain landmarks and the words to the national anthem of her home country. But her statements show knowledge of the community in which she grew up. Objective reports confirm serious discrimination and abuses of people of Kam's ethnicity and that they are not considered citizens in her country of origin.

It should be considered that it is reasonably likely that Kam is (1) stateless and (2) that she is at risk of persecution, and thus a refugee if the treatment she fears is considered to amount to persecution. Kam should not be required to enquire at the embassy of her country of birth for confirmation of whether she is considered a national because she is claiming asylum from that country.

The applicable standard of proof for proving that a person has a particular nationality may be the higher civil standard ('*balance of probabilities*'). Where the '*balance of probabilities*' standard applies, this merely means that the individual needs to show that they *probably* have a particular nationality.

In Czechia, applicants under the procedure for determining statelessness are required to provide evidence that no State recognises them as its citizen (Article 49a(2)(c), Immigration Act). Stateless persons must therefore prove that they are indeed stateless. The applicant does not need to submit all the documents listed in the law, but only those that, taken together, prove their statelessness. According to the law, such evidence can be:

- a passport (even if it has expired);
- birth or marriage certificates;
- a document confirming that they are not citizens of the State where they were born or where they have been living, or the State that issued them the documents; and
- documents confirming that they have tried to obtain the citizenship of the State where they were born or where they have been staying or the State that issued them the documents.

WHAT EVIDENCE MAY BE USEFUL TO PROVE STATELESSNESS?

The evidence that will be available and relevant for a person to demonstrate that they are '*reasonably likely*' to be stateless varies considerably depending on the circumstances. In some cases, a person will have no evidence other than their testimony, and that should suffice in many cases. In other cases, a person may have many documents, some of which may help prove statelessness. It is important to assess the person's individual circumstances as well as the laws, practice, and circumstances of the countries with which the person has a relevant link.

In Czechia, the evidence used in the process for determining statelessness can be categorised into two main groups:

1. Evidence relating to the individual case of the applicant and their personal history, and
2. Information relating to the applicant's country of origin or the legislation governing the acquisition and loss of nationality in the State under consideration.

In contrast to the international protection procedure, where the primary responsibility for the protection of individuals rests with the host country, applicants for statelessness determination are usually required to make genuine and credible efforts to acquire a nationality from States with which they have links and to provide evidence of this. The MoI rarely contacts embassies or state authorities directly, but gathers pertinent information, including legislative documents and nationality laws, from the applicant's country of origin. This approach is often used to assess the applicant's claim and determine their statelessness. The requirement that persons should prove their statelessness in the procedure, in particular with a document from the embassy stating that they do not consider them as their nationals, has proved to be difficult and, in some cases, impossible in practice, since it is not in the individual's capacity to obtain such a document. Jurisprudence has concluded that the burden of proof is shared, and if the individual cannot prove their lack of nationality, the administrative authority must take the necessary steps to establish the facts.³⁹

Evidence that may be useful to demonstrate a person's identity, place of origin or former habitual residence, and statelessness includes – but is not limited to:

- the individual's own statements about why they are stateless
- statements of relevant people who know them (e.g. from a stateless community)
- identity documents (e.g. birth certificate, extract from civil register, national identity card, voter registration document)
- passports or other travel documents (valid or expired)
- evidence of refusal of entry into a country of potential nationality
- parent's or applicant's marriage certificate
- citizenship certificate
- documents relating to renunciation of nationality, or any other legal documents or court decisions
- identity and travel documents of family members
- confirmation of registration with UNRWA, GAPAR, or some other relevant agency⁴⁰
- applications or correspondence relating to efforts to acquire or obtain proof of a nationality, including for example letters or emails to or from government officials, including embassies and consulates [where safe/appropriate to engage in such communication]
- statements or affidavits by people who accompanied the individual to an embassy or contacted an embassy or other institution to make enquires about nationality or identity
- school certificates or evidence relating to inability to attend school
- military service records
- medical records (including hospital / midwife birth records)

³⁹ See [Case Law Database](#)

⁴⁰ Note that while UNRWA registration may indicate a person's Palestinian origin and confirm eligibility to receive UNRWA services within UNRWA's area of operations, registration with UNRWA does not prove nationality or residence status, nor is such registration proof, on its own, that a person necessarily falls within or is excluded from the scope of the 1951 Convention or the 1954 Convention. See ENS & BADIL report, note 2.

- employment records or evidence proving impossibility to be employed
- social welfare records or other evidence of restricted access to social services
- records relating to failed efforts by the individual to travel to a country of possible nationality or former habitual residence or failed efforts to remove the individual to another country, or any other relevant documentation issued by immigration authorities or border control
- a list of people who have been deprived of citizenship or other evidence of deprivation of nationality relating to the applicant, a family member, or an associate

Evidence that may be useful to assess in relation to the relevant country(ies) includes, but is not limited to:

- news articles or reports that discuss statelessness relevant to the person's situation in the country of origin
- extracts of relevant nationality laws, ideally combined with an expert report or other evidence to provide appropriate context and comment on their implementation in practice and any differences between regions
- expert reports about the nationality laws, birth registration, and related practices of relevant countries and/or relating to their specific circumstances

This is not an exhaustive list. Often there will not be much evidence. Other types of evidence may be relevant in some situations. Some of these pieces of evidence will clearly carry more weight than others, and much may depend on whether an official believes a person's testimony. As with refugees, stateless people should be given the benefit of the doubt: i.e., the statements of a person applying for recognition as a stateless person should be accepted unless there are strong reasons and evidence to indicate that their testimony is not accurate with respect to material factors. Some stateless people will know what evidence is available to support their claims (if any) and be able to explain their situations chronologically and coherently, while others will not.⁴¹

The Immigration Act does not list what specific evidence and documents will be used as sources for the decision. It only lists the documents to be submitted by the applicant. However, in principle, it should be analogous to the standard of proof applied in decision-making on asylum applications, as confirmed by case law. The courts have confirmed the necessity of similarity to the asylum procedure, and therefore the MoI should bear the responsibility to find evidence to prove or disprove statelessness.⁴²

ROBUST STATELESSNESS DETERMINATION PROCEDURES AND RIGHTS OF STATELESS PEOPLE

The UNHCR Statelessness Handbook confirms that a statelessness determination procedure should be formalised in law to ensure fairness, transparency, and clarity of the procedure.⁴³ It is important to ensure that certain procedural safeguards are guaranteed so that the dignity and safety of stateless people is ensured. Therefore, at least the following safeguards should be incorporated or ensured:

- Information on eligibility criteria and the determination procedure is accessible
- Right to have an interview with a decision-making official is respected
- Applicants have access to good quality interpretation and translation

⁴¹ Further information about how to adequately evidence a statelessness application is available in this [Best Practice Guide](#) (relating to in the UK, but relevant in other countries; see Section C16 in particular).

⁴² See [Case Law Database](#)

⁴³ UNHCR's Statelessness Handbook, paragraph 71.

- Applicants have access to legal assistance; free legal aid is guaranteed to people in need
- Decisions are based on individual merits with reference to accurate country information
- Decisions are issued in written form, with reasoning
- Right to appeal is guaranteed and accessible in practice
- UNHCR and any national monitoring bodies have adequate access to monitor the procedure

In Czechia, there are procedural safeguards in the procedure for determining statelessness. Stateless applicants are guaranteed the right to remain in the territory and are issued with an ID. However, some rights and safeguards are only guaranteed during an initial application, for example, the right to remain in the territory.

Other rights include an interview, if necessary, and a free interpreter for all administrative actions. A decision must be issued within 6 months, or 12 months in complicated cases. Decisions (refusals and grants) are given in writing with reasons.

The Mol's decision comes into legal effect on the day it is delivered, and no administrative appeal can be filed against it. Only an appeal to the court is admissible but this does not have suspensive effect.⁴⁴ This means that if the court does not grant the appeal, the applicant's presence on the territory is no longer permitted. Therefore, the person must specifically ask the court to grant suspensive effect when filing the appeal. The court should handle appeals against negative decisions on statelessness determination as a matter of priority.⁴⁵ The competent court to hear these appeals is the regional court located in the individual's registered place of residence.⁴⁶

The general rules of Administrative Procedure are also applicable in the procedure for determining statelessness.

Applicants for statelessness determination do not have the same right to accommodation as asylum-seekers. However, courts previously ruled that "*not admitting applicants for statelessness determination to an asylum seekers' accommodation centre is an unlawful action*" and applicants should be admitted to an accommodation centre until a decision is made on their application.⁴⁷

Stateless applicants are granted an ID that allows them to stay within the territory for the purpose of the proceedings, but this does not ensure health insurance. Health insurance is accessible only to those recognised as stateless and issued with a tolerated stay visa (see Section 3). This is despite a court ruling that access to healthcare should be granted to applicants while the statelessness procedure is pending, by analogy with the situation of asylum seekers.⁴⁸

Czechia does not offer stateless applicants free legal aid in the procedure for determining statelessness, which sets it apart from the provisions for asylum-seekers in the international protection procedure. However, there are organisations that provide services, which may be accessed by stateless people (see Section 11).

⁴⁴ Section 170g para. 5 of the Immigration Act

⁴⁵ Section 172 para. 11 of the Immigration Act

⁴⁶ Section 172 para. 7 of the Immigration Act

⁴⁷ Czech Republic - A.K. and E.K. v. Ministry of Interior, 26.10.2020. Available at [Case Law Database](#).

⁴⁸ Municipal Court Prague decision Nr. 14 A 131/2020. Available at [Case Law Database](#).

For further information about international standards for statelessness determination and examples of good practices, see ENS reports [Statelessness determination and protection in Europe: good practice, challenges, and risks](#) and the [Good Practice Guide on Statelessness Determination and the Protection Status of Stateless Persons](#). Additional country information is available in the Statelessness Index Country Profile on [Czechia](#).

7. STATELESS REFUGEES

Statelessness may be relevant in the asylum procedure as a significant factor in proving persecution or an indication of a well-founded fear of persecution or human rights violations. Statelessness should be considered in the assessment of claims for international protection, recognising the heightened vulnerabilities and challenges that stateless persons may face.

Refugees can have a nationality or be stateless. Statelessness may be the result or the cause of persecution or other harm. The 1951 Refugee Convention refers to some refugees "not having a nationality" in Article 1(A)(2). A refugee's statelessness may be a reason for or very closely linked to their fear of persecution (for example a person who has been deprived of nationality for political reasons or who is part of a stateless community that is systematically persecuted). For other refugees, statelessness may be largely incidental to their fear of persecution or other harm (for example a stateless person who has fled a war which is unrelated to their lack of nationality). Or both factors can co-exist, where a stateless person fears persecution specifically linked to their statelessness and also serious harm due to an armed conflict.

The Czech Asylum Act establishes the rights, procedures, and criteria for asylum-seekers, including stateless individuals, who are seeking refuge in the country. In the case of stateless people, the Asylum Act assesses the risk of persecution and serious harm in relation to the person's last State of residence prior to their arrival in Czechia and where they have established ties.⁴⁹ The Asylum Act does not define a stateless person, so the 1954 Convention definition applies.

It is vital that statelessness is identified in asylum procedures. This is necessary, for example, to ensure that all forms of persecution are considered and to prevent a stateless person being forced to return to a country where they face a risk of persecution or harm or a precarious future as a stateless person.

The MoI will investigate to determine whether the applicant faced persecution in their last place of residence based on the 1951 Convention grounds.⁵⁰ In addition, the MoI will also assess whether the person would be in danger of being subjected to the death penalty, torture, inhuman or degrading treatment or punishment, or that their life or human dignity would be in danger if returned. The MoI will also consider the possibility that the person may find themselves in a situation involving international or internal armed conflict. These factors are taken into account when considering eligibility for subsidiary protection.⁵¹

⁴⁹ Section 2 para. 2(f) of the Asylum Act

⁵⁰ Section 12 of the Asylum Act

⁵¹ Section 12 and 14a of the Asylum Act

If the applicant does not meet the conditions for international protection, they should apply solely for the determination of their stateless status.

OVERLAPPING PROCEDURES

If a stateless person applies for asylum and for determination of their statelessness, it is important to determine both claims. Each application should be assessed, and both types of status should be explicitly recognised so that even if refugee status or another form of protection ceases, the person remains entitled to protection as a stateless person. This also helps to prevent arbitrary or unlawful detention, which can occur if a stateless person, who has no country to which they can return, is refused international protection (or their protection status ceases), and their statelessness has not been identified and determined. Statelessness determination should be conducted either in parallel with or following the refugee status determination, with due regard to the primacy of the asylum claim and the principle of confidentiality for refugees in statelessness determination procedures (see section 6). This means that if determining statelessness would require making enquiries to authorities that could compromise the safety of the applicant, the statelessness claim should be suspended until the refugee status determination is concluded, or the host State should determine that the applicant is stateless based on their own testimony and any other available evidence.

A stateless person who has been refused refugee status (or who was granted refugee status which has now ceased due to improved conditions in the country of origin) should not be expected to return to a country in which they do not have nationality. Identifying statelessness early in the asylum process can also help prevent later unlawful detention of stateless people for the purpose of removal to a country of which they are not a national.

Stateless people should be informed about the asylum procedure and statelessness determination procedures, and any other possible routes to protection, a residence permit, or nationality. They should also have access to specialised legal advice. Once informed about all possible options, stateless people should be able to choose which is the best procedure for them to follow.

In Czechia, the international protection procedure has priority over the procedure for determining statelessness. In cases where a stateless individual applies for both international protection and stateless determination concurrently, MoI will suspend the procedure for determining statelessness and resume it once the international protection process is concluded. If the applicant for statelessness determination is granted a different type of residence permit, including international protection, the MoI will issue only a certificate of their statelessness, which does not confer the rights associated with stateless persons as defined in Section 49a of the Immigration Act.⁵² This means that a stateless person will enjoy the rights related to the specific residence permit they have been granted and can provide evidence of their statelessness if needed (e.g. claiming nationality rights for their future children, as outlined in Section 9).

If a negative decision is made in the asylum procedure the individual may not necessarily be informed about the procedure for determining statelessness, as there is no obligation on authorities to do so. There may be a gap in ensuring that a person identified as (potentially) stateless is properly recognised as stateless to prevent detention and/or attempts at forcible removal. It is essential to provide individuals with the necessary

⁵² Section 170d para. 4 and 5 of the Immigration Act

information about the procedure for determining statelessness to ensure access to the procedure and to prevent detention and/or forcible removal.

It is also advisable for individuals to consider applying for both international protection and statelessness determination procedures. Statelessness determination is not an automatic process, and pursuing both options can provide the best chance for securing residence status and protection.

Asylum registration and screening procedures and other procedures (and the people who work within them) should not assume that applicants have a nationality. Screening forms should include questions that will help to identify statelessness.

Additional information about statelessness and asylum registration, refugee status determination, and detention is available on the [Statelessness Journeys website](#) and in the statelessness section of the EASO/EUAA [Practical Guide on Registration: Lodging of applications for international protection](#).

Example: for an overview of the asylum process and related procedures for a stateless person in the Netherlands, see [Statelessness in the Netherlands: A Step by Step Guide](#) [A practical guide for caseworkers in contact with stateless persons in the Netherlands] (ASKV Refugee Support, ISI, ENS, 2018) and [What a Judge Cannot See: Statelessness Determination in the Netherlands](#) (2023).

8. DETENTION OF STATELESS PEOPLE

Stateless people often face a heightened risk of arbitrary detention, particularly where procedural safeguards to identify and determine statelessness are lacking.

Article 9 of the International Covenant on Civil and Political Rights and Article 5 of the European Convention on Human Rights guarantee the right to liberty and prohibit unlawful and arbitrary detention. Any deprivation of liberty must be necessary, reasonable, and proportionate in the circumstances, and it must comply with domestic and international law. Detention must be used as a measure of last resort and is justified only when other less invasive measures are not sufficient to achieve legitimate aims. Detainees must always have the right and access to judicial review and adequate legal advice. There should be maximum limits on the duration of detention, restrictions on multiple instances of detention, and limits on the cumulative length of time spent in detention.

Stateless people often do not have a legal residence permit in any country and are detained for this reason in some countries. They are often also at heightened risk of prolonged arbitrary detention in relation to identification and removal procedures because they frequently lack identity documents and removal is often impossible (because stateless people are, by definition, not considered nationals of the proposed country of removal and often are not accepted for removal).

UNHCR has called on States not to detain stateless persons on the sole basis of them being stateless. UNHCR's Statelessness Handbook emphasises that, even when detention is justified, people awaiting statelessness determination must not be detained in the same spaces as convicted criminals or individuals awaiting trial. Statelessness determination procedures are an important mechanism to reduce the risk of prolonged and/or arbitrary detention. There must be mechanisms for detained people who are stateless or whose

nationality is unclear or unconfirmed to be referred to statelessness determination procedures when appropriate.⁵³

In Czechia, detention can be ordered by the Immigration Police for the purpose of expulsion or by the MoI in the case of asylum-seekers when there is a risk of non-compliance with alternative measures. The legal framework has weaknesses, as there is no obligation to explore all alternatives before detention.

While certain safeguards are in place, including pre-determined maximum periods of detention and the possibility of periodic reviews, detainees are required to proactively request these reviews, which can be a challenge for those who may not be aware or face obstacles in navigating the legal process. Legal aid is available to detainees, but access for NGOs is limited, which may affect the assistance provided. Statelessness may become relevant in detention cases, but the focus remains on assessing the potential for the individual to return to their country of origin, rather than their statelessness. Upon release, individuals do not automatically receive legal status or identification documents, which requires them to independently initiate the application process for statelessness determination. This places a significant responsibility on the individual, which can lead to delays and difficulties in obtaining their residence status and access to essential services.⁵⁴

Persons at risk of statelessness who are detained should be informed about the procedure for determining statelessness to avoid future arbitrary or repeated detention.

Additional information is available in UNHCR's [Stateless Persons in Detention: A tool for their identification and enhanced protection \(2017\)](#) and on the [Stateless Journeys website](#). Additional country information is available in the [Statelessness Index Country Profile](#).

9. BIRTH REGISTRATION AND CHILDREN'S RIGHT TO A NATIONALITY

All children have a right to a nationality, under the UN Convention on the Rights of the Child and other international human rights instruments. The 1961 Convention on the Reduction of Statelessness sets out international standards for avoiding childhood statelessness.

Birth registration can help prevent statelessness, although it is usually not, on its own, proof of nationality, unless the child was born in a country that provides automatic nationality to all children born on the territory (birthright, or *jus soli* nationality). Lack of birth registration heightens the risk that a child may be left without a nationality or experience difficulties proving nationality.⁵⁵

Where nationality is recorded at birth registration, birth registrars and others involved in registering the birth of a child should ensure that a nationality is not incorrectly recorded and that it is not assumed that the child has a nationality.

According to the Czech Act on Birth Registry, all children must be registered within three days of birth. The registration is carried out by the facility where the child is born or, in the case of home birth, the parents must register the child at the registry office in their place of residence within three days (or within three days of being capable of doing so in the

⁵³ See UNHCR's Statelessness Handbook, paras 112-115.

⁵⁴ For more information on detentions, please see the country survey data for the Statelessness Index, available [here](#)

⁵⁵ For more information, see [Birth registration and the prevention of statelessness in Europe: identifying good practices and remaining barriers](#) (ENS, 2020).

case of the mother). Not registering a birth is an offence and punishable by a fine of up to 10000 CZK. All children, regardless of their nationality, will get a Czech birth certificate, issued by the birth registry. The birth certificate is issued within 30 days of the birth notification. In the case of same-sex couples, only one parent can be listed on the birth certificate, and in the case of children born through surrogacy, only the surrogate mother is listed as a parent on the birth certificate.⁵⁶

NATIONALITY DETERMINATION PROCEDURES

A nationality determination procedure is a way for a person who is a national of a particular country to obtain confirmation of the fact of their nationality. It is often important for a person who was born in a country of which their parents are not nationals, to parents who have different or multiple nationalities, or to stateless parents. Nationality determination procedures can confirm which children who would otherwise be stateless are in fact nationals. Nationality determination is a simple process for most children if their parents are nationals of the country of birth. For children of migrants, the procedure should entail consideration of the laws and practice of the authorities of the parents' country(ies) of nationality, as well as of the child's country of birth. Where a child holds multiple nationalities from birth, this should be recorded, and the parents informed. Nationality determination should always be carried out by the competent decision-making authority, and the information recorded across different public authorities should be consistent.

In some cases, a nationality determination procedure will identify that a child is stateless. If there are no automatic safeguards in law for the child to acquire the nationality of the country in which they were born, the parents should be informed of ways that their child might be able to obtain a residence permit and acquire a nationality as soon as possible.⁵⁷

In Czechia, a child's nationality will be determined when parents apply for a Czech passport, ID, or visa. In case of doubt, parents must apply for a Certificate of Czech Citizenship at the birth registry in the place of birth.⁵⁸

There is no clear firewall to prevent the sharing of birth registry information with immigration authorities and it is not known whether this happens in practice.

There are provisions in the Citizenship Act for stateless children born in the territory. Children acquire nationality automatically, by operation of the law, if both parents are recognised as stateless by the authorities. If not, the procedure is non-automatic and an application for a Certificate of Czech Citizenship must be made, which is decided by the Mol. In this case, the parents must prove that the child has not become stateless only because the parent failed, without serious reasons, to take necessary steps before the authorities of their country of nationality to ensure that the child obtains that nationality.⁵⁹ This approach does not align with the 1961 Convention as it contradicts the principle of non-discrimination and the primary goal of preventing statelessness, notably by facilitating automatic nationality acquisition for individuals born within the territory of States party.

⁵⁶ Act on Birth Registry

⁵⁷ Additional information available in [ENS's report relating to birth registration for stateless children](#) (note 16) and on the [Stateless Journeys site](#), and birth registration is covered in the [Statelessness Index](#) (see Questions PRS.6.a – 6.h on the country surveys).

⁵⁸ [Ministry of the Interior, Acquisition of Czech citizenship \(CZE\)](#)

⁵⁹ Sections 5, 29, and 41 of the Citizenship Act

Additionally, at least one of the parents must have legal (temporary or longer-term) residence on the territory for more than 90 days at the time of the child's birth. This requirement applies regardless of whether both parents are stateless or not.⁶⁰

Children's right to a nationality: jurisprudence

In 2021, the UN Committee on the Rights of the Child issued a decision in [A.M. \(on behalf of M.K.A.H.\) v. Switzerland \(no 95/2019\)](#), concerning a stateless child threatened with removal from Switzerland to Bulgaria. The Committee found (among other findings) that Switzerland had not considered the best interests of the child nor taken necessary measures to verify whether the child would be able to acquire a nationality in Bulgaria. The Human Rights Committee also found a violation of the child's right to a nationality in [Zhao v. the Netherlands](#) (2020). The authorities had registered a child born in the Netherlands as having 'unknown' nationality and refused to change it to 'stateless' on the ground that the child had not proved that he had no nationality. Without being recognised as stateless, the child could not acquire Dutch nationality in line with existing safeguards to prevent statelessness of children born on the territory.

Also in 2021, [a Spanish court](#) recognised as a Spanish national a child who would otherwise have been stateless. The child was born in Morocco while her mother was travelling from Cameroon to Spain, outside a health facility, and her birth could not be registered in Morocco. The mother tried to register the child as a national of Cameroon, but this was not possible. The Court held that the safeguard established in Spanish law to prevent statelessness of children born in Spain should be applied broadly, in compliance with international treaties and with the principle of the best interests of the child. Therefore, it found that there was a violation of the child's fundamental rights and declared that the child held Spanish nationality and ordered the registration of the child's birth. More information is available [here](#).

More information is available on the [Stateless Journeys website](#) and in the [Statelessness Case Law Database](#). Additional country information is available in the [Statelessness Index Country Profile](#).

10. NATURALISATION AND INTEGRATION

Naturalisation is a crucial step for many stateless people to finally obtain a nationality. Article 32 of the 1954 Convention establishes that:

*States shall as far as possible facilitate the assimilation and naturalization of stateless persons. They shall in particular make every effort to expedite naturalization proceedings and to reduce as far as possible the charges and costs of such proceedings.*⁶¹

Where stateless people are eligible for facilitated naturalisation or integration assistance, it is important that their statelessness has been recorded in official documents or systems in other procedures, such as asylum or immigration applications and decisions, so that

⁶⁰ Sections 5, 29, and 41 of the Citizenship Act

⁶¹ There is a parallel provision for refugees in the 1951 Refugee Convention (Article 34).

when they apply to naturalise or for integration assistance, it is already recorded that they are stateless, and this will not pose a barrier for them.⁶²

In Czechia, naturalisation is an option after five years of continuous permanent residence. For an individual with tolerated stay, this would mean five years of tolerated stay followed by five years of permanent residence. However, in the case of stateless individuals (including refugees), naturalisation may be facilitated at the Mol's discretion once the person attains permanent residence. The Mol may also waive the requirement that stateless persons and refugees not be dependent on the social security system. Other requirements for naturalisation must still be met, including language and citizenship tests (unless exempt due to having studied Czech for three years, being under 15, over 65, or having a mental disability), proof of income, and a clean criminal record. A criminal record disqualifies an individual from obtaining Czech citizenship, with no exceptions for stateless persons.⁶³

More information on the requirements for applying for Czech citizenship can be found on the [website of Mol](#) (in Czech).

A fee of CZK 2000 for adults and CZK 500 for minors and refugees will be charged for the naturalisation application. The Ministry may, at its discretion, reduce this fee to CZK 500 in exceptional cases and to CZK 100 for minors and refugees. Although there is no explicit exemption for stateless persons, they may apply for reduced fees in exceptional cases.⁶⁴

Integration programmes in Czechia do not have specific provisions for stateless individuals. The state integration programme is reserved for beneficiaries of international protection. Stateless persons seeking assistance with integration may need to rely on more general integration programmes and services available to foreign nationals, which could include language courses, job placement assistance, and other support designed to facilitate integration in Czech society.

11. HELP FOR STATELESS PEOPLE IN CZECHIA

ORGANIZATION FOR AID TO REFUGEES (OPU)

Founded in 1991, OPU is Czechia's most experienced and largest non-governmental organisation providing assistance to refugees, stateless persons, and migrants. OPU provides free, personalised legal and social assistance throughout the country, extending its support to reception, accommodation, and detention facilities, as well as operating from five regional offices. OPU actively monitors and exposes unlawful practices and systemic deficiencies in Czech asylum and migration policy. The organisation maintains a consistent presence in the media and organises public events to raise awareness of issues of discrimination and xenophobia. You can [contact OPU](#) if you are in need of legal or social assistance related to statelessness or are looking for more detailed information.

⁶² Further information about naturalisation, especially for stateless refugees, is available on the [Stateless Journeys site](#).

⁶³ Sections 14 and 15 of the Citizenship Act

⁶⁴ Act on Administrative Fees no. 634/2004 Coll. Available [here](#).

EUROPEAN NETWORK ON STATELESSNESS (ENS)

ENS is a civil society alliance of over 180 organisations and individual experts in 40 European countries. ENS is committed to breaking the cycle of statelessness and ensuring that the rights of everyone living in Europe without a nationality are fully respected. ENS coordinates awareness-raising and advocacy projects and campaigns aiming to protect the rights of stateless people, promote realisation of the right to a nationality, end childhood statelessness, and raise awareness about the rights of minorities in terms of statelessness, migratory statelessness, and the arbitrary detention of stateless people. You can [contact the network](#) if you are looking for more detailed information about statelessness. You can also [subscribe to ENS's newsletter](#) and find out about [joining the network](#).

12. RESOURCES

- [Statelessness Index Survey: Czechia](#)
- [Statelessness Index Country Briefing: Czechia](#)
- [UNHCR Mapping Study: Faces of statelessness in the Czech Republic](#). UNHCR, Prague 2020. ISBN 978-953-95763-7-8.
- **Jurisprudence:**
 - [Supreme Administrative Court Database](#)
 - [ENS Case Law Database](#)
- **UPR 4th Cycle**
 - [UPR Submission for 42nd Session](#)
 - [Pre-session 42 statement](#)

◀ STATELESS JOURNEYS ▶

Statelessness is often overlooked in asylum and migration debates. It is a hidden but very real issue affecting many refugees and migrants in Europe.

The #StatelessJourneys campaign – led by the European Network on Statelessness – calls for full access to rights and support for stateless refugees, and for this to be better prioritised as part of international protection responses.

<https://statelessjourneys.org>



European
Network on
Statelessness



organization
for aid to
refugees

European Network on Statelessness (ENS) is a civil society alliance of over 180 members in 40 countries working to promote the right to a nationality in Europe. ENS is committed to ending statelessness and ensuring that everyone living in Europe without a nationality can access the rights they are entitled to under international law.
<https://www.statelessness.eu/>

Founded in 1991, the Organization for Aid to Refugees (OPU) is Czechia's most experienced and largest non-governmental organisation providing assistance to refugees, stateless persons, and migrants. You can contact OPU if you are in need of legal or social assistance related to statelessness or are looking for more detailed information.
<https://www.opu.cz/>

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